

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

LAMONT PAUL VIGE, #670095	§	
	§	
V.	§	CIVIL ACTION NO. G-02-677
	§	
LUPE LOZANO, ET AL.	§	

ORDER

On May 25, 2005, Plaintiff, Lamont Paul Vige, filed a letter requesting the return of his partial appellate filing fee of \$50.00.

On October 7, 2004, Vige filed his “ Notice of Appeal” appealing the dismissal of his case which was entered on September 23, 2004. On October 19, 2004, the Magistrate Judge issued on Order which, pursuant to the Prison Litigation Reform Act (PLRA), required Vige to submit to the Court an application to proceed *in forma pauperis* along with a certified trust fund data sheet and/or the appellate filing fee of \$255.00. On January 25, 2005, after receiving the necessary documentation, the Magistrate Judge issued an Order for the collection of the appellate filing fee which instructed Vige to pay an appellate initial partial filing fee of \$40.60, and thereafter, pay the balance of \$214.40, in monthly installments as provided in 28 U.S.C. § 1915(b)(1). On April 6, 2005, the United States Court of Appeals for the Fifth Circuit dismissed Vige’ s Appeal, for want of prosecution, for his failure to timely file a brief.

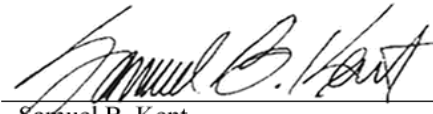
Under the plain language of the PLRA, the appellate filing fee is assessed at the moment an appeal is filed regardless of whether the appeal is later dismissed, Williams v. Roberts, 116 F.3d 1126, 1128 (5th Cir. 1997); a dismissal upon reasons other than the merits of the appeal does not lead to a refund of the appellant’ s money. *Id.* In fact, even if the appellant voluntarily

dismisses his appeal he is not entitled to relief from an Order directing payment of the filing fees.
See United States Court of Appeals for the Fifth Circuit, Administrative Order, September 21, 1999.

It is, therefore, the **ORDER** of this Court that Vige' s request for the return of the appellate partial filing fee of \$50.00 (Instrument no. 40) is **DENIED**.

It is further **ORDERED** that the “ Order for Collection and Payment of Full Filing Fee on Appeal” remains in full force and effect.

DONE at Galveston, Texas, this 13th day of June, 2005.



Samuel B. Kent
United States District Judge